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1908

A letter on the transmitting of "A bill to
bring about the gradual adjustment of rank
throughout the several lines of the artillery,
cavalry and infantry of the regular army.



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LETTER OF THE HONORABLE THE SECRETARY OF WAR,
RETURNING TO THE CHAIRMAN COMMITTEE ON MILI-
TARY AFFAIRS, HOUSE OF REPRESENTATIVES, H. R.
16502, ENTITLED "A BILL TO BRING ABOUT THE
GRADUAL ADJUSTMENT OF RANK THROUGH-
OUT THE SEVERAL LINES OF THE ARTIL-
LERY, CAVALRY, AND INFANTRY OF
THE REGULAR ARMY."

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WAR DEPARTMENT,
Washington, April 1, 1908.

Respectfully returned to the chairman Committee on Military Affairs, House of Representatives.

I have carefully read this bill (H. R. 16502) and the accompanying memorandum thereon by the Chief of Staff.

I fully and cordially concur in this effort to bring about a gradual readjustment of rank for the sole purpose of promoting the greater efficiency of the Army. At the same time I think the officers who have lost rank through no lack of merit and no fault of their own have a just claim in equity and are entirely deserving of the relief contemplated by this bill. Though it will result in depriving some other officers of enjoying still further advantages, gained through no merit of their own over less fortunate comrades, it will not deprive them of any rank already gained, neither will it prevent their ultimate rank as high as they would attain were the present inequitable condition continued. On the contrary, unless the present condition be rectified, many officers now in the Army will be deprived of ever rising even as high as colonel, and a number of others could not go beyond the rank of major before being retired for age.

WM. H. TAFT,
Secretary of War.

MEMORANDUM FOR THE SECRETARY OF WAR.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
Washington, March 7, 1908.

(Subject: Pending bills in Congress to bring about gradual readjustment of rank of certain officers of the Army.)

During the Fifty-ninth Congress, second session, identical bills (S. 8275, H. R. 25238) were introduced in both Houses of Congress, and referred by the Committees on Military Affairs to the Secretary of War for information relative to the measures proposed. During the present session of the Sixtieth Congress the same bill was reintroduced in the Senate (S. 159) December 4, and a similar bill (H. R. 16502) was introduced in the House February 6, 1908, and likewise referred for report to the Secretary of War.

These bills, in brief, provide that hereafter promotions by seniority in any arm of the line of the Army shall be made, as now, from the next lower grade within the arm, but through seniority as determined, not by date of present commission in the grade, but by date of original commission in the arm. The remaining provisions merely cover the preparation of the necessary lists showing the order of future promotion, and the promotion of certain officers who occupy anomalous positions through transfers from one arm to another or through the action of courts-martial or examining boards.

The rule of action—seniority by length of service in the arm—which these measures seek to put in force is now, and has been since the act of October 1, 1890, the fundamental principle of promotion throughout the Army. This last act, however, provided only for future promotions and accepted the lineal standing of officers as then fixed by the operation of previous laws and customs as the basis for promotion by seniority thereafter. Consequently, no officer who has entered the service since October 1, 1890, is affected by the proposed measures. Nor are officers affected by them who since that date have reached the grade of colonel, or who have been retired, or who, on that date, were second lieutenants, but who had not been passed over through the operation of existing law by others of shorter commissioned service.

On the other hand, the future promotion of every other officer then in service and who is still on the active list may be influenced by the enactment of the law proposed. Measures, therefore, affecting such a considerable part of the officers of the Army are deserving and should receive the most careful scrutiny before final action is taken thereon; and on this account they have been thrown open to a wide consideration in order to ascertain in advance their probable effect both on the officers interested and on the efficiency of the service, and to determine whether the bills as drawn are sufficient to accomplish their intended purpose without prejudice to interests not involved.

It was not to be expected that on a subject involving so many adverse interests a unanimity of opinion could be secured. Where every officer, if not directly interested, has at least close connection with brother officers whose interests are directly involved, collective judgment entirely uncolored by personal desires is beyond attainment. Thus, when separately considered by the three divisions of the War Department General Staff, only one division was found in unanimous agreement. One division united in adverse judgment on the bill as drawn, but in a minority report suggested similar action somewhat narrower in scope. Another divided with the majority in opposition to the proposed action and the minority in its favor. The other division was unanimously in its favor. This difference of opinion has its counterpart wherever else the measures have been considered within the service, and is, I am satisfied, but indicative of the same difference that exists throughout the Army.

Nevertheless, this wide consideration has served, I believe, to search out every argument that can be advanced either in opposition to or in favor of the proposed measure and to reveal its ultimate effects on the Army. I deem it wise, therefore, before submitting my own judgment, to give here briefly every important argument advanced on either side of the question in order not only to show the basis of my conclusions in the matter, but to afford opportunity for those upon whom the final determination may fall to draw their own.

Again, this summary of the arguments, pro and con, seems important for another reason. The present bills, though less far-reaching in effect than others in the past, are not the first effort toward legislation to correct what is believed by many officers to be a serious injustice resulting from the operation of former law; and, unless finally disposed of at this time, it is not likely that they will be the last. Wherever a considerable number of associated persons believe themselves continuously injured by present or past laws operating

unequally among their kind, it is only natural to expect, so long as they believe it possible for new laws to right the wrong done them, that they will continue to struggle for such remedial legislation. It is hoped, therefore, that this presentation of both sides of the case in practical completeness may, for the good of all, help to attain a definite legislative decision.

To insure a proper interpretation of the arguments which follow, it is necessary also to include here a brief review of the historical and legal growth of the system of promotion in the Army and of the unfortunate conditions which, so far as they are now removable, the proposed measures are intended to remove.

PROMOTION IN THE ARMY.

Under the constitutional authority of the Executive promotion in the Army was, in the absence of Congressional action, until 1812 governed wholly by regulations. Under the first known rules, promulgated May 26, 1801, for the artillery and infantry, and extended March 7, 1808, to the cavalry and riflemen organized by later authority, promotions in these several arms were made "regimentally," that is, *by seniority in the regiment*, to include the grade of captain; and "in the lines," that is, *by seniority in the arm*, through the field grades of major and lieutenant-colonel.

Statutory control of promotions in the Army was first assumed by act of June 26, 1812, section 5 of which was as follows:

That the military establishment authorized by law previous to twelfth day of April, eighteen hundred and eight, and the additional military force raised by virtue of the act of the twelfth of April, eighteen hundred and eight, be, and the same are hereby, incorporated; and, that from and after the passing of this act, the promotions shall be made through the lines of artillerists, light artillery, dragoons, riflemen, and infantry, respectively, according to established rule.

The regulations of 1813, promulgated after the passage of this act, and publishing both the act itself and the regulations formulated, presumably, in accordance therewith, prescribed as the rule of promotion:

1. *Original* vacancies will be supplied by selection; *accidental* vacancies by seniority, excepting in extraordinary cases.

2. Promotions to the rank of captain will be made *regimentally*; to that of field appointments, by *line*; the light artillery, infantry, and riflemen being kept always distinct.

This regulation therefore must have been the "established rule" referred to in the act of 1812, as quoted above. Nevertheless, in that it makes exceptions to the rule of seniority in filling original vacancies and in extraordinary cases, it differs from the only known regulations on the subject existing prior to the passage of this act, and leaves a natural inference that the "established rule" was not at that period very firmly fixed.

But whatever the rule may have been, the act indicated, passed just after the declaration of war against Great Britain, gave it legislative sanction and made it applicable thereafter until changed by legislation to each of the several arms of the line of the entire military establishment as then existing. During the progress of the war, however, new forces were organized and the former establishment was increased and otherwise changed by sundry legislative acts, and it is doubtful whether the provisions of the act of 1812, regulating pro-

motion by applying specifically to a defined existing status, could have been extended definitely to the new forces and the changed conditions. In any event it was provided by section 12 of the act of March 30, 1814:

That from and after the passing of this act promotions may be made through the whole Army in the several lines of light artillery, light dragoons, artillery, infantry, and riflemen, respectively; and that the relative rank of officers of the same grade, belonging to regiments or corps already authorized, or which may be engaged to serve for five years, or during the war, be equalized and settled by the War Department agreeably to established rules; and that so much of the act entitled * * * passed the twenty-sixth of June, one thousand eight hundred and twelve, as comes within the purview and meaning of this act, be, and the same is hereby, repealed.

The wording of this section—"promotions *may* be made," etc.—did not make the rule therein included mandatory, but permissible; while the modifying phrase, "agreeably to established rules," so far as the verbal construction of the sentence is concerned, seems restricted to the second member and to modify only the settlement of questions of relative rank, and not the method of promotion prescribed. Under this construction it would seem beyond question that promotions might have been made within any of "its several lines," or arms, in any manner at the pleasure of the Executive. Nevertheless, no change in the methods of promotion followed this act, and the regulations of 1814 following its passage contained a practical repetition of the regulations of 1813. It may be concluded, therefore, that either no change in the custom was desired by the Executive, regardless of the intent of Congress, or that no intent of changing existing customs lay in the legislative act considered.

Under this last and only reasonable conclusion this section of the act of 1814 could have had no further purpose than to extend the rule of promotion to which legislative sanction had been given by the act of June 26, 1812, to other forces; and the expression "through the whole Army" could have had no broader meaning than thus to include for this purpose all of the forces organized under the several acts passed during the war.

By the reorganization act of March 3, 1815, following peace with Great Britain, the Army was again reduced and the various forces raised for war, as thus reduced, were consolidated in "the military peace establishment of the United States," to consist of—

such proportions of artillery, infantry, and riflemen, not exceeding, in the whole, ten thousand men, as the President of the United States shall judge proper. * * *

By the act of April 24, 1816, it was provided:

That the regulations in force before the reduction of the Army be recognized, as far as the same shall be found applicable to the service; subject, however, to such alterations as the Secretary of War may adopt, with the approbation of the President.

The regulations referred to are those of May 1, 1813,^a from which the rules of promotion already given are taken, and which were promulgated after and were in accordance with section 5, act of June 26, 1812.

Nevertheless, examination of the successive compilations of military laws following this period discloses that the repeal of this section was clearly regarded as effected by section 12 of the act of March 30,

^a Scott's Digest of the Military Laws of the United States, 1873, 182; Opinions of the Attorneys-General, 1873, XIV, 168.

1814; but inasmuch as this last act was regarded merely as a repetition of the previous law, and was not in itself mandatory, and since the "established rule" at that time still permitted exceptions at the will of the President, no question concerning the interpretation of the law, as disclosed in the regulations of the succeeding years, appears to have then arisen.

Successive regulations thereafter to 1857 contained the same rule of promotion as laid down in the regulations of 1813, with only such change in wording from time to time as was demanded by changing composition and organization of the Army. And, however flexible the "established rule" may have been during the first years of the Army under the Constitution, its continued application during this period must have served to fix it definitely so that in the regulations of 1857 no exceptions in filling "original vacancies" or in "extraordinary cases" were thereafter authorized, and seniority in the regiment or in the arm, except in cases of disability or other incompetency, became thus the only rule, and hence the "established rule" regarding promotion.

The rules as laid down in the regulations of 1857 were:

19. All vacancies in established regiments and corps to the rank of colonel shall be filled by promotion according to seniority, except in case of disability or other incompetency.

20. Promotions to the rank of captain shall be made regimentally; to major and lieutenant-colonel and colonel according to the arm, as infantry, artillery, etc.; and in the staff departments * * * according to corps.

By the act of August 3, 1861, Congress provided for the retirement of incapacitated officers, and also for the promotion incident to such retirements. Section 16 of that act provided:

If any commissioned officer of the Army or of the Marine Corps shall have become or shall hereafter become incapable of performing the duties of his office, he shall be placed upon the retired list and withdrawn from active service and command, and from the line of promotion, with the following pay and emoluments * * *; and the next officer in rank shall be promoted to the place of the retired officer, according to the established rules of the service. And the same rule of promotion shall be applied successively to the vacancies consequent upon the retirement of an officer.

The established rules as referred to in this act could have been no other than the rules given above as laid down in the regulations of 1857.

The regulations of 1861 and 1863, so far as they relate to promotions, repeat verbatim the regulations of 1857.

When therefore the consolidation of the laws of the United States in the Revised Statutes was undertaken the only laws bearing on promotions in the line of the Army were either or both of the laws of 1812 and 1814 and the law of 1861 as quoted above; and the only rule of promotion in existence was that provided by the regulations then in force which was the same as laid down in the regulations of 1857.

The act of Congress providing for revision and consolidation of the laws authorized the bringing together of all statutes on similar subjects, the omission of redundant or obsolete enactments, and the making of such alterations as might be necessary to reconcile contradictions, supply omissions, and amend imperfections in the original text. It did not authorize radical or important changes in the laws themselves, and it can not be presumed that the commissioners in the execution of their instructions attempted knowingly any changes

that would alter the original effect of the law. In the Revised Statutes as enacted June 22, 1874, the provisions regulating promotion in the line of the Army were as follows:

SEC. 1204. Promotions in the line shall be made through the whole Army, in its several lines of artillery, cavalry, and infantry, respectively. Promotions in the staff of the Army shall be made in the several departments and corps, respectively.

SEC. 1257. When any officer in the line of promotion is retired from active service, the next officer in rank shall be promoted to his place, according to the established rules of the service; and the same rule of promotion shall be applied, successively, to the vacancies consequent upon such retirement.

The references to the original texts from which these sections were compiled, as shown in the Revised Statutes, are, so far as the two sections relate to the line of the Army, the act of 30 March, 1814, for section 1204; and the act of 3 August, 1861, for section 1257.

This latter section, providing for promotions resulting from retirements, repeats practically the words of the original law and leaves no doubt of its meaning when construed in connection with the established rules to which it refers and as known then to exist.

Section 1204, providing a general rule of promotion, on the other hand, not only differs more in phraseology from the original text, but substitutes for the permissive *may* of the act of 1814 the mandatory *shall*. It makes no reference to "established rules," and in this follows the verbal construction of the original; but inasmuch as the probable intent of the act of 1814 was only to extend the rule of promotion provided in the act of 1812 *through the whole Army*, as then composed of the different forces organized for the war with Great Britain, this section of the Revised Statutes, to express the same intent, should properly have gone back to the law of 1812 and included the phrase "according to established rule," as it was included in section 1257.

Again, section 1204 follows the original text in the employment of the phrase "through the whole Army;" but as used originally this applied to an army made up of several forces organized under different acts of Congress and for varying periods of service, and it could not have been given then the same meaning as when used later in reference to a homogeneous body as the Army was in 1874. But if its meaning were not the same as in its original use, it must be considered redundant or be given a new interpretation as employed in section 1204. Considering this section by itself alone, the only possible interpretation seems to define a system of promotion that shall be *through the whole Army in each of its several lines*, or arms, without regard to established rules. But considering the idea of seniority consistently attached for many years to the expressions by line, in the lines, etc., this could only be a system by seniority throughout the arm, instead of in part by seniority in the regiment and in part by seniority in the arm, as required by the then established rule.

But it can not be assumed that on the part either of the commissioners in revising the laws, or of Congress in enacting them anew when thus revised, there existed any intent to change the rule of promotion as previously in force under the law. Rather the contrary must be assumed; and it seems plain that the phrase "through the whole Army" was included in section 1204 in the belief that as used in the original text it helped to provide the only existing rule of promotion, and with the clear intent of continuing this rule under the Revised Statutes.

¶ This intent, moreover, is further manifested when considered in connection with section 1257, concerning which no question of interpretation seems possible, for it can not reasonably be concluded that Congress intended to put into effect two different systems of promotion, one of which should apply only in the case of vacancies caused by retirements and the other to vacancies from all other causes.

The intent of Congress as here expressed was recognized in the construction placed upon sections 1204 and 1257 by the War Department; and succeeding regulations to 1890 repeated in effect the same rules as contained in the regulations from 1857 to the adoption of the Revised Statutes.

The act of October 1, 1890, provided:

Hereafter promotions to every grade in the Army below the rank of brigadier-general, throughout each arm, corps, or department of the service, shall, subject to the examination hereinafter provided for, be made according to seniority in the next lower grade of that arm, corps, or department: *Provided*, That in the line of the Army all officers now above the grade of second lieutenant shall, subject to such examination, be entitled to promotion in accordance with existing laws and regulations.

The object of this act was to substitute lineal promotion for regimental promotion, and in the original form of the bill it would have accomplished this purpose throughout all grades. But based on a claim in behalf of the then first lieutenants that such a measure would perpetuate the inequalities from which many of them suffered as a result of the previous law, the proviso was added which excepted them from the general provisions of the act and entitled them to regimental promotion in accordance with existing rules. As a consequence of this, lineal promotion throughout was not attained until the act of April 26, 1898, which provided:

¶ Hereafter all vacancies occurring in the cavalry, artillery, and infantry above the grade of second lieutenant shall, subject to the examination now required by law, be filled by promotion according to seniority from the next lower grade in each arm.

By this act promotion by seniority in each grade of each arm was finally established as the fundamental rule of promotion through the company and field grades; and has since continued to be the sole rule of promotion throughout the service.

THE EXISTING CONDITIONS AND THE PROPOSED RELIEF.

Under the system of promotion which so long prevailed, whereby officers were promoted by virtue of seniority in the regiment to include the grade of captain and of seniority in the arm through the field grades, many inequalities arose in the relative rank of officers and in the conditions which surrounded officers in the military service. This may be made clear by considering two officers, approximately of the same age, entering the service at the same date, but assigned to different regiments. In one regiment where casualties through deaths, retirements, resignations, or other causes were frequent, the subaltern assigned thereto advanced with comparative rapidity through the grades of second and first lieutenant to captain and took his place on the lineal list for promotion through the field grades perhaps years before the other, assigned to a regiment where casualties were few, could reach it. If it be remembered that not two officers but every officer entering the service during this period entered under these conditions the growth of inequalities in rank and

position may be appreciated. Not only officers of the same age and date of commission were thus later widely separated, but not infrequently officers of long service were passed by their juniors in years and service. A captain under these conditions was likely at any time to see a man who had entered the service long after him become his post, battalion, or squadron commander.

It is to be borne in mind that no question of relative merit entered into the question of promotion under these rules, just as no such question enters into the problem that the proposed act is now intended to solve. Officers attained the higher grades through what may be termed the accident of law, or, as many believed, of incorrect construction of the law. It does not matter so much that these last may have been in error in this belief. The evil effect on the efficiency of the service remains the same. Had the officers who thus accidentally, or through the law of chance, reached high rank attained their place under the operation of a law intended to promote only those best fitted therefor, those passed could have no just cause for complaint; but where this occurred through a rule that put promotion outside of the influence of individual effort or ability, it seems impossible to deny reasonable cause for those not favored by chance to feel themselves unwarrantably injured.

But regimental promotion is as old or older than our Army. It was inherited probably, with many other of our military customs, from Great Britain. In theory it is not altogether unsound. That the survivors of a regiment suffering the most casualties should derive the most benefits seems proper when casualties mean death in battle and survivors mean survivors of the battle itself, not absentees from it. But under such a system absentees from regiments must always profit undeservedly at the expense of officers of other regiments exposed possibly to greater risks but suffering fewer casualties. Moreover, with modern armies peace is their normal state and the casualties of this state greater by far in total than the casualties of war. Certainly, as applied in our Army, in the latter days of the system, its advantages, however great, were outweighed in effect by the evils resulting from it.

The act of October 1, 1890, was the outgrowth of the efforts to put an end to the inequalities in rank that arose from regimental promotion during the period following the promulgation of the Revised Statutes. For, though similar inequalities must have followed the application of the same rule before the Revised Statutes became effective, they do not appear to have become a disturbing element at that time nor to have affected either the peace of mind of the personnel or the efficiency of the service. This was doubtless due to the fact that during most of that earlier period the Army was considerably smaller, and relatively or actually more widely scattered, with the intercommunication among its parts more difficult and less frequent, and the effect of these inequalities in consequence less apparent. But it was also unquestionably largely due to the fact that at no time during that period does there seem to have arisen any question concerning the legality of the rule under which promotions were made. Under the law as embodied in section 1204, Revised Statutes, however, and as thereafter interpreted, this question arose early and repeatedly until a considerable number of officers were convinced that they suffered from inequalities arising

not from the law as written, but from a wrong construction of the law. While the correctness of this view was never admitted by the War Department, nor confirmed by any authoritative decision or opinion, there can be no doubt that the agitation of the question incident to this feeling served to direct attention to the existing unfortunate conditions and to the necessity for a more equitable rule that resulted finally in the act of October 1, 1890.

But this act, in effect, accepted conditions as they then existed with all the inequalities that had arisen under the previous laws, and looked only to preventing similar inequalities arising thereafter. So far as officers who entered the service after the date of its approval are concerned, it has worked with absolute equality; but for officers then in the service who had already gained or lost through the operation of the previous rule this act served only to perpetuate this gain or loss or to intensify it.

Had the law then enacted provided that, for the purpose of promotion, all lieutenants should be listed in each arm according to length of commissioned service in the arm the inequalities that had arisen, and the growth of which it was intended to prevent in the future, would have disappeared in a much shorter period than is possible under the act as finally passed. This, moreover, would have resulted in substantial justice to all concerned that it was possible still to reach by legislation without infringing upon rights already vested. But so far from following this course, the act in its final form went to the other extreme of excepting from its general provisions the then first lieutenants and leaving open to them the chances for good or evil of regimental promotion. This action, not expressed in the bill as introduced, was included later on the theory that many first lieutenants who had already suffered loss of rank through regimental promotion would have their position relative to those who had passed them perpetuated by the change proposed, while if regimental promotion were still left to them it was possible that the loss of rank might in part be regained. While some few officers did probably thus regain something of what they had previously lost, others, through the same law of chance, lost still more, and others not before affected must have either lost or gained precisely as they would have lost or gained under the same rule applied in its original form. The effect of the act of 1890 was, therefore, in the general case, to perpetuate the inequalities existing, and in not a few cases to intensify them, though intended for an exactly contrary purpose. Moreover, the inequalities arising or increasing under this act arose or increased through one grade in the face of a system operating through all the other grades with absolute equality. The evil effect of the law on the service was through this alone vastly increased.

Officers who through regimental promotion thus lost in relative rank were passed by others not only at the time their juniors in rank, but their juniors in years as well. In this last fact lies the most serious consequence of the system when applied in connection with a system of retirement for age. Promotion by seniority balances certain defects with certain virtues. Under any such system applied uniformly throughout an arm every officer entering that arm at a given age passes gradually through every grade from the lowest to the highest, and is certain, if he lives and is qualified, to reach that highest grade before retirement. That is, promotion, however slow,

is eventually assured. Under this system officers grow accustomed to their position in rank relative to all others and look upon the maintenance of this relative position throughout their service in the nature of a vested right. Anything that operates to change this position unfairly or to injure their chances of reaching higher grades in the order fixed by their entry into the service injures their self-respect, discourages their ambition, affects their loyalty to seniors who were once their juniors, and consequently is opposed to the efficiency of the service as a whole. When, further, anything operates not only to retard expected promotion, but to prevent it, the injury is felt with vastly increased intensity, and the consequences throughout are by so much the worse. The operation of a rule that for many years promoted officers through the lower grades practically by chance, but through the higher grades strictly by seniority, resulted in many officers reaching the field grades by passing over others their seniors in age, and thus not only retarded the promotion of the latter, but in not a few cases prevented them from ever reaching the higher grades before their statutory retirement.

This is the condition in the Army to-day, and it is this condition that the proposed measures have been drawn to correct. Complete rectification is of course impossible. In the time that has elapsed not a few of those who suffered from the inequalities resulting from regimental promotion have been retired or through other causes have left the service. On the other hand, some who profited unduly have now reached or passed the grade of colonel and do not come within the provisions of the measure as drawn. But many of those who suffered loss are still in active service, and though it is impossible in some cases to restore to them all that they have lost, the legislation asked for if enacted will hereafter gradually place them nearer to the relative position belonging to them by seniority in service and enable them to reach the higher field grades, from which a number of them without such action are now forever barred.

As before stated, this is not the first attempt looking to legislation to accomplish this result. In 1892 a bill for a similar but more far-reaching purpose passed the lower House of Congress, but did not come to a vote in the Senate because of its possible injustice to certain officers then on the active list who had received their commissions in the Regular Army as a reward for services in the civil war. These officers have now all reached the grade of colonel or passed to the retired list, and the same objection to remedial measures no longer holds. Furthermore, that bill, and others preceding this, aimed not at the gradual restoration of original relative rank, but at an immediate adjustment involving recommissioning many officers concerned and reduction of those who had profited as well as elevation of those who had lost. There is no proper comparison between the measures then and now proposed. Not only are no officers now concerned who, like those of civil-war record, were entitled to special consideration, but all involved stand upon practically equal footing as to relative length and similarity of service. The only grades now affected are lieutenant-colonels and majors and a few of the captains of the several arms. The number of officers concerned is thus sharply limited. Again, not only is there designed no sudden readjustment of rank, no reductions, no interference with rights of rank or privileges already vested, but the

adjustment is to be gradual and to take place only through future promotion as vacancies occur. Not one additional commission will have to be issued, and no additional expense is involved. The officers who have gained in the past and have thus enjoyed higher rank and greater pay than they had, through their date of entry, a reasonable right to expect will be left in the enjoyment of this rank and pay until those whom they passed and who are still on the active list have through promotion taken their place in accordance with the same rule of promotion that now fixes the place of every other officer.

Opinions as to the propriety of such action as proposed must, of course, vary with the point of view. To the officers who have suffered loss of rank in the past and of hope for the future such a law appears eminently just; while to those who have gained in rank through the operation of law, and who under the proposed measure would lose, not indeed what they have already gained, but a part of that which they still hope to attain, it doubtless appears harsh. But there is a difference to be remembered even here. Those who have gained have enjoyed higher rank, dignity, and pay for many years. These can not be taken away. Those who have lost, even if now given opportunity to regain their loss in part, can by reason of their age continue to enjoy it only for a comparatively brief period. Those who have gained, if now themselves passed by the others, will, in the general case, still be able before retirement to attain the same rank as is possible under present conditions. But those who have lost will, in the absence of such action as proposed, be unable in many cases to reach the higher ranks.

In the one case the action proposed means suspended promotion only. In the other, failure of such action means absolute loss of rank during active service and eventual retirement with less rank than they otherwise would have attained.

THE ARGUMENTS.

In the preceding parts of this report attempt has been made to set forth the law and regulations bearing upon the subject, the conditions resulting from their operation, and the remedial measures now proposed for the removal in part of the existing inequalities. This has been deemed necessary to insure proper understanding of the arguments which remain to be presented. For though in the preceding parts it has been necessary to touch upon many of these arguments effort has been made there simply to present an impartial view of actual results with only such reference to the facts supporting one side or the other as essential for a complete grasp of the subject. There follow now, as briefly as their importance admits, the arguments of both sides not touched upon above, or not covered there in sufficient detail. For convenience related arguments on both sides are brought together, and for clearness and ease of reference arguments generally against the proposed measure are in italics and those generally for it are in roman.

1.

It is urged in opposition to the proposed measure—

That regimental promotion was the established rule for nearly one hundred years, fixed by regulations in 1801, sanctioned by the acts of June 26, 1812, and March 30, 1814, and embodied without change as

section 1204 of the Revised Statutes in 1874, and thereafter continued in force until changed by the acts of October 1, 1890, and April 26, 1898.

That no question concerning the legality of the rule, as enforced under the laws of 1812 and 1814, arose until after its incorporation in the Revised Statutes; and that no sufficient reason existed for such question arising then unless the intent existed with Congress to change the previous rule in enacting section 1204, or unless the phraseology of that section manifestly made such change. But from the instructions of Congress to the commissioners charged with the work of compilation and revision of the statutes, it is clear that no intent of substituting a new rule could properly have existed in them; and since these instructions, embodied in the form of an act of Congress, expressed also the full intent of Congress, it is equally clear that no such intent existed in that body. Again, not only was there no intent of changing the rule, but section 1204, by repeating almost verbatim the wording of the promotion clause of the act of 1814, could not manifestly have made any change. And, finally, even in the event of doubtful meaning, in the absence of intent to change the previous law, any section of the Revised Statutes should be construed in accordance with the original act or acts from which it was compiled.

The view that section 1204 made no change in the previous law has been uniformly supported by every authoritative opinion rendered. Thus Judge-Advocate-General Dunn said, March 24, 1876:

The first clause of section 1204 of the Revised Statutes not only does not modify the rule of regimental promotion in question, but does not in the least affect it, relating as it does, to an altogether different subject. * * * It is, in my judgment, as above indicated, a mere declaratory statement of the law in regard to a matter which has never been the occasion of dispute * * * leaves paragraph 20 of the present regulations intact and in full force, as the existing law in regard to promotions in the Army.

In reply to a resolution of the House of Representatives, Alphonso Taft, Secretary of War, expressed the opinion, May 29, 1876—

That officers of the Army have been promoted since the 22d day of June, 1874, as provided in section 1204 of the Revised Statutes.

In a report on Senate bill 1614, Forty-sixth Congress, providing for revision of rank of certain officers promoted under section 1204, Revised Statutes, and declaring in effect that such promotions had not been made in accordance with that section, General Sherman, then commanding the Army, said:

My judgment is adverse to the whole bill (S. 1614). The present rule of promotion has existed since the formation of our Government, and was inherited from England.

Mr. Cockrell, chairman of the Senate Committee on Military Affairs, Forty-sixth Congress, 1880, in reporting on the same bill (S. 1614), said:

Your committee sees no sufficient reason for changing the long-established rule and law.

Attorney-General Wayne MacVeagh expressed the opinion, April 14, 1882:

Since the enactment of this last provision (sec. 12, act Mar. 30, 1814), which continued in force down to the revision of the statutes, promotions to the rank of captain have been made regimentally, so that the construction given thereto, in practice, has been that it made no change or modification of the previously existing rule. According to this construction (which was acted upon for about sixty years), the act of 1814, while it contemplated that promotions should be made in the several lines or arms through the whole Army, and that officers should be promoted in their several lines or arms, did not prescribe **how** promotions **within the line or arm** should be made, whether regimentally or lineally.

As thus understood, and the language of the act is susceptible of that interpretation, there was no conflict between it and the rule referred to.

Section 1204, Revised Statutes, contains substantially a reenactment of the provision above quoted from the act of 1814. When embodying that provision in the Revised Statutes it is reasonable to presume that Congress was familiar with the construction which had been placed thereon, and so long acted upon by the executive department, and that, if it had been the intention of that body to introduce a different rule on the subject of promotion, different phraseology would have been chosen to signify such design.

By adopting the language of the previous statute the fair inference is that its construction was acquiesced in, and that no change in the law of promotion was intended.

I am accordingly of the opinion that the rule laid down in paragraph 20, Army Regulations, by which promotions to the rank of captain shall be made regimentally is not inconsistent with the provisions of section 1204, Revised Statutes, but that it (the rule) remains in full force.

In response to a resolution of the House of Representatives, Secretary of War Robert T. Lincoln, reported, March 8, 1882—

That the action of the department under the section referred to (1204) is in accordance with the construction given to that section by the Attorney-General.

Finally, Congress itself, in excepting the then first lieutenants from the general provisions of the act, confirmed the view that no change in the rule had been made previously by the proviso included in the act of October 1, 1890—

That in the line of the Army all officers now above the grade of second lieutenant shall
* * * *be entitled to promotion in accordance with existing laws and regulations.*

Opposed to this it has been submitted by those who favor the proposed measures:

That while it is true that no question of the legality of the rule of promotion arose until after the enactment of the Revised Statutes into law, this was due to the fact that if promotions previous to that time were made under the act of 1812, they were clearly required to be made according to the "established rule;" while if that act were regarded as repealed by the act of 1814, and this last was the sole law governing promotions, then the fact that it was not mandatory but permissive in character left promotions to be regulated entirely by the executive, and, whatever the system, gave no reason for any question concerning its legality.

But in the Revised Statutes the rule of promotion as included in section 1204, if taken, as therein shown by the marginal references, wholly from the act of 1814, so far as the line of the Army was concerned, then the substitution of "shall" in section 1204 for "may" in the original act made whatever course was **authorized** under that act **mandatory** under the Revised Statutes. The course authorized by the act of 1814 must be determined from itself alone or in connection with the act of 1812, to which it referred. If considered in connection with this act, as, it is admitted, it should undoubtedly properly have been considered, then it was evidently a mere extension, "through the whole Army" as recently enlarged, of the law of promotion established definitely by the act of 1812 for the limited forces then composing the Army. But if considered by itself alone, and regarded as having repealed the law of promotion included in the act of 1812—and it is evident that this view was taken by the commissioners in revising the statutes—then the act of 1814 must contain all of the rule which it authorized and all of the law that was intended to be included in section 1204 of the Revised Statutes.

Section 12 of the act of 1814, so far as it refers to promotion, reads:

That from and after passing of this act, promotions **may** be made through the whole Army in its several lines of light artillery, light dragoons, infantry, and riflemen, respectively.

Section 1204, Revised Statutes, reads:

Promotions in the line of the Army **shall** be made through the whole Army in its several lines of artillery, cavalry, and infantry, respectively.

If the act of 1814 authorized by itself any system of promotion whatever, it could be only a system that should promote through the whole Army in each of its several lines. This system was made mandatory in the Revised Statutes. There was no reference to "established rules." Without considering such rules or customs it would be impossible to read into the lines of either of these laws a system of promotion that should be partly regimental and partly lineal. Whatever the system, it must promote through the whole Army in each line. A system partly regimental, partly lineal, does not fulfill this requirement, and was thus illegal as applied in promotions made under section 1204.

It is admitted that Congress in enacting the Revised Statutes had no real intent of changing the existing rule of promotion, providing that rule was in accordance with the preexisting law. But whatever the intent it can not rightfully stand against the letter of the law as embodied in the Revised Statutes. Congress itself, in section 5596, provided that—

The preexisting laws thus revised are repealed and no longer in force.

And it has been decided by the courts that—

Whether the revision correctly reproduced the preexisting statutes in any particular case, the Revised Statutes became the law of the land June 22, 1874. (15 C. Cls., p. 87.)

So far as the view that section 1204, Revised Statutes, made no change in the rule of promotion is confirmed by the opinions rendered in the numerous claims that have arisen for readjustment of rank since its enactment, it is impossible to avoid the conclusion in a careful study of all the later opinions (Secretary of War, May 29, 1876; May 15, 1880; March 8, 1882; General of the Army, May 12, 1880; Senate Military Committee, May 2, 1880; Adjutant-General, April 7, 1881, and March 3, 1882), that they were all based upon the earlier opinions of the Judge-Advocate-General (1876) and the Attorney-General (1874). If defects exist in these two opinions, therefore, they must also exist in the later opinions founded upon them.

The opinion rendered by the Judge-Advocate-General in March, 1876, was the result of the first attempt to obtain a decision concerning the meaning of section 1204. In formulating the opinion then rendered it would appear that the Judge-Advocate-General failed to discover the true intent and meaning of the act of March 30, 1814, and thus failed to discover the true meaning of the expression "through the whole Army" as used in that act, and the different meaning it must have had as included in section 1204, when applied to totally different conditions. The Judge-Advocate-General seems to have been satisfied with a consideration of the opinions of others, inasmuch as the date of reference to him of the question was March 21, 1876, and his opinion thereon was rendered three days later—too short a time to discover all the data bearing upon the subject. Moreover, the opinion of the Attorney-General of January 9, 1873, to which considerable weight is apparently attached by the Judge-Advocate-General, was not applicable, in the sense used, to the case, since it was rendered prior to the enactment of the Revised Statutes and referred to the earlier law.

In the opinion of the Attorney-General, November, 1874, similar reference is also made to the same opinion of 1873, and it is further plain from the context of the opinion of 1874 that no consideration was then given by the Attorney-General to the effect of the recent enactment of section 1204 upon the provisions concerning promotion found in the Army Regulations of 1863; nor does it appear that consideration of that section was required by the question before him, and upon which the opinion indicated was rendered.

Finally, it is to be noted that the failure of Congress heretofore to enact remedial legislation along the lines now proposed has followed, in every instance, adverse reports thereon from the War Department, which reports were, it is believed, founded in every case upon the opinions and decisions here referred to, and which opinions and decisions a limited study of the legal growth of our system of promotion will show to have been not well founded. Furthermore, lineal promotion, which since 1890 has been the general rule, operating, except in the cases now under consideration, with absolute equality, was for a time opposed by the War Department as impracticable, expensive, and inadvisable.

2.

It is urged by those in opposition to the proposed measure:

That the advantages in rank and pay that have been gained by those who profited from the system of regimental promotion were not only reached through the application of the law of the land, but were secured to them as a right recognized both by the Executive in appointing them and by the Senate in confirming their appointments. Further, that their rights not only to their present position, but to such future promotion as may result from this position, have been thus completely vested in them; and that any law that would either reduce them from their present rank or destroy or delay their chances for future promotion would infringe upon these perfect rights and be in its nature ex post facto or retroactive, and therefore illegal or unjust.

In opposition to which view it is submitted:

That even if it be admitted that the right to the present rank and rewards of those who have gained has been completely vested, and thus made absolute—and, so far as the remedial measure now proposed is concerned, no claim to the contrary is made—the same conclusion can not properly be reached in respect to rights of future promotion. These last are not vested rights; they are not absolute, but relative. Congress, which has the authority to raise and support armies, has equally the authority to abolish armies and to abolish or change all ranks and grades, and all promotion included or allowed therein. Its authority to change the rule of promotion has never been questioned and has in several instances been exercised. The same authority will doubtless be exercised in the future and must remain unquestioned. Where the exercise of such authority results in temporary inequity to certain officers, Congress may hereafter listen and refuse or grant remedial legislation, as it has heretofore refused or granted such relief as warranted in its judgment by the facts. The enactment of the proposed law would be no more an infringement on the rights to promotion of any officers affected by it than was the law of October 1, 1890. The proposed law would not be ex post facto tech-

nically, since this term as used in the Constitution applies only to criminal or penal statutes, nor *ex post facto* in effect. The claim to the contrary is founded clearly upon a misconception of the meaning of the term. The proposed law is not even retroactive or retrospective in its nature. It does not affect past or present rank or conditions. It looks only to future readjustment. In this the proposed law differs from most or all of the preceding efforts looking to the relief of those who suffered unduly under the operation of previous laws, and differs thus purposely, since it is appreciated that whatever measure of justice may be granted them only such should be desired as is possible without threatening injustice to others.

3.

Further, in opposition to the proposed measure:

That admitting those officers who lost in rank through regimental promotion were injuriously affected in rank and pay, that their ambition was destroyed, their loyalty affected, and their efficiency decreased, admitting even that the efficiency of the Army itself was thereby injured—these now are all accomplished facts. The enactment of a law that will serve hereafter to pass them in turn over part of those by whom they were once passed will operate in an exactly similar manner upon those thus passed, and the discouragement, loss of ambition, and injury to efficiency, instead of being removed, will only be doubled.

That the officers who lost in the past entered the service under the same conditions as those who gained, with the same understanding and the same acceptance on the part of both of the probable chances of promotion and with the same opportunities for choice of regiments. That those who gained did so not infrequently through acceptance of a commission in regiments which others virtually refused to enter, and thereby through harder or less desirable service earned the promotion which resulted from this selection, and that the proposed law, by disregarding these facts, would in effect rob them of the proper rewards for such service. In this connection the following extract is quoted from a paper submitted in opposition to the measure under consideration:

It was well known to officers in accepting their first commissions years ago that regimental promotion to the grade of captain was the established rule, and we made our selections of regiment and branch of service accordingly, in many instances deliberately declining almost absolute certainty of early promotion for some other consideration. Thus for years and years graduates from the Military Academy ignored the flattering prospects for promotion offered by the four regiments of colored troops, until in 1877 vacancies in these regiments had so accumulated from year to year that they numbered sixteen. We who were assigned to those regiments in those days and grimly stuck to them and to the service as we found it should not now be deprived of any supposed advantage gained thereby by any uncertain meaning of section 1204.

In response to which it is submitted:

That the effect of the operation of the past laws on officers who lost rank thereunder is not similar to the probable effect of the proposed measure on those who gained and consequently that the effect on the service of the two can not be the same. In the one, those who lost were almost invariably passed by others who were their juniors in years, and lost therefore not only present but future rank through the consequent impossibility of reaching the higher grades before retirement. To this fact is due whatever injurious effect on officers and service alike that followed or may be expected to follow if relief be not granted. The lesser loyalty felt toward a superior officer by

others who have suffered loss of rank is not so much due to the fact that an officer once their junior is now ahead of them as to the still more discouraging fact that not only is this younger officer their superior now, but if this condition continues they must forever be barred thereby from reaching the same or higher grade. In the other case these conditions do not obtain. Those who have gained unusual promotion must, by reason of their fewer years, still reach the highest grades even if now passed by the officers who were once their seniors in rank as well as years. For those who have gained there is thus no real loss; there is only retardation in future promotion. They will still be assured of this promotion while those who have suffered are, under existing conditions, equally assured that the same promotion is not open to them. Furthermore, neither the proposed law nor any other can restore all that the losers have lost or take away anything the gainers have gained. The latter have held for many years rank and position and received increased pay that under an equitable system of promotion would have been secured to those who now seek future restoration only to their proper places. What has been lost in the past can not be restored, nor is it sought by this measure to attempt its restoration.

Again, admitting that existing conditions were understood by all upon entry into the service, and such entry in effect accepted whatever chances of promotion resulted from the regiments in which commissioned, it is still to be remembered that almost every officer now concerned in the proposed measure entered after the period of the enactment of the Revised Statutes, when the correctness of the application of the law of promotion therein contained had been brought into question, and when every proper effort was being made to secure another interpretation or a new and more equitable law. The result of these efforts was apparent in the law of October, 1, 1890, but this law not only failed to correct the inequalities then existing, but in some cases intensified them, and by itself gave reasonable cause for seeking legislation to restore as far as possible the opportunities which had thus been taken away.

4.

And, further, in opposition:

That there may be question whether injustice was not done some officers when the system of promotion in force under the Revised Statutes at the time of their appointment, which had been the established practice since the organization of the Government, was changed by the act of 1890. It is recognized that those who had been passed by their juniors might in some cases have regained the rank thus lost, had regimental promotion continued until they reached the grade of captain, and that such officers were by that act deprived of this chance. But whatever question there may be in connection with those officers there can be no such question so far as officers who had reached the grade of captain before the act of 1890 are concerned.

Further, that such a measure as proposed can affect only part of those officers who lost rank through regimental promotion and that to give relief to some and not to others who suffered equally or more would be manifestly unfair to those others and encourage efforts on their part for similar purposes.

To which it is submitted in reply:

That the injustice resulting to certain officers from the act of 1890 was not different in its nature from the injustice to the same or other officers under the operation of the Revised Statutes. In one case the injustice resulted from a law concerning which no question of its legality can arise but in the other from a law under which this question arose repeatedly during the period of its application. A measure that would attempt to remedy the injustice done in the first case without touching upon the second would manifestly either fail of passage or give rise to efforts to extend similar legislation to officers of the other class. If a remedy is to be given to one it should be given to all that it is practicable now to reach. Moreover, of the officers affected by the proposed measure less than half a dozen had reached the grade of captain when the act of October 1, 1890, became effective.

That it is not practicable to reach now all who have suffered in the past is clear. But that this can properly be held sufficient cause to refuse relief to those whom it is possible still to reach is not admitted. The proposed measure does not provide any relief for officers on the retired list who may have suffered equally in the past with others still in the active service. Manifestly the bill as drawn could not apply to such cases; retired officers are no longer in the several lines of the Army and no gradual readjustment of their rank can be made. Such readjustment would have to be completed and effective upon some fixed date and would involve the application of retroactive provisions in the law. Such provisions could not be justly restricted to retired officers and their application to officers on the active list would result in the same confusion that resulted in the failure of former measures seeking similar or more far-reaching relief. Moreover, retired officers in matters concerning precedence and command have been removed from the influences of promotion and from a position where their condition of mind affects the efficiency of the Army. But the longer remedial action in favor of active officers is delayed the more difficult it must become to make them amends for the misfortunes encountered or to remove the consequent blight upon the efficiency of the service.

Again the proposed bill can not affect colonels, since they have already reached the highest possible lineal grade, and any further promotion for them must be by selection. But as drawn, the bill would operate to place eventually every lieutenant-colonel and major and every captain affected exactly where his length of service entitles him to be, and these grades are all that it is now possible to reach by such legislation as proposed.

Efforts have been made before toward remedial legislation and at times when many more officers would have derived benefit therefrom than is now possible. But these measures could not then be enacted without doing apparent injury to officers entitled to special consideration on account of their services in the civil war. This condition no longer obtains and partial justice to those whom it is still practicable to reach is therefore now possible without injustice resulting to any known case.

5.

And, further, in opposition:

That the accurate determination of the position upon the lists for promotion to be prepared under the provisions of the proposed law

would be impracticable if not impossible at this date. In a report, dated February 6, 1907, upon the bills as introduced in the Fifty-ninth Congress, the Military Secretary said:

The Revised Statutes went into effect nearly thirty-three years ago. Within a few years thereafter Congress on several occasions considered, upon the appeals of officers concerned, the question of enacting legislation declaring that lieutenants of artillery, cavalry, and infantry were entitled under section 1204 to promotion by seniority in the respective arms of service, instead of in their regiments, and declined to enact such legislation. Congress subsequently enacted the law of October 1, 1890, which operated at a final settlement of the question. At this late day it would be difficult, if not impossible, accurately to determine just what the positions of officers to whom the provisions of this bill would apply had they been promoted since 1874 under a system different from that under which they have been promoted. Officers who have been promoted under the provisions of the act of October 1, 1890, have acquired legal rights in respect to their rank and standing in the Army, both as regards precedence and command, and future promotion. The advancing in rank of certain officers in the manner contemplated by this bill would deprive some other officers of rights and privileges already acquired in accordance with existing law.

The report of Mr. Cockrell for the Senate Military Committee in the Forty-sixth Congress, 1880, heretofore mentioned, stated that the bill then pending to readjust the rank of first lieutenants promoted after the Revised Statutes went into effect so as to give them the rank and positions they would have had received had they been promoted by seniority in the arm of service instead of in the regiment "would work inextricable confusion, as will be soon seen from the list of promotions from first lieutenants to captain in the Army from 1870 to 1879, inclusive."

Nearly twenty-seven years have passed since the committee expressed that opinion, and the difficulties of attempting to readjust the rank of officers in the manner proposed in the accompanying bill would be infinitely greater at this time than they would have been in 1880.

Opposed to which it is submitted—

That in the form which proposed measures for the purpose intended have heretofore taken, and which form was referred to by Senator Cockrell in his report of the Senate Committee on Military Affairs in 1880, this objection was a valid one. There is, however, no comparison between those measures and the one now proposed and this objection does not hold. The bill referred to by Senator Cockrell was intended to accomplish immediate readjustment of rank, effective upon its passage, and involving recommissioning the officers elevated or reduced in accordance with its terms. Under such a law certainly a vast deal of confusion—and worse—was to be expected. The measure now proposed is of an entirely different nature. It involves no radical or sudden change, nor the reduction of any officer from the position he now holds.

The preparation of the lists required by the first section of the bill can be neither a serious nor a confusing task. The date of every officer's entry into the service and every fact connected with his service necessary for the purpose are known and are matters of official record. In the ordinary case nothing more than a series of annual Army Registers covering the period since 1874 is necessary. The few exceptional cases result from the anomalous positions held by certain officers through transfer, from one arm to another, or through sentence of court-martial or action of examining board. There are but few of these and the provisions of the bill have been drawn to cover them and to fix definitely their places on the promotion lists in such manner as to insure to them the same justice—and no more—attempted for all.

In substantiation of this claim that the task of preparing these lists will be neither seriously difficult nor confusing, such lists have been prepared for each of the three arms concerned and covering every officer affected by the terms of the bill. These lists are, of course, unofficial, but they have been prepared from the official

registers, carefully checked, and are believed to be correct to date of preparation. Only a few hours were employed in their actual preparation.^a

The necessity for such lists and their use may be understood from a consideration of the operation of the proposed measures if enacted into law. For illustration we may consider a major of infantry standing, say, 25 on the present lineal list, but who through loss of five files incident to regimental promotion, would stand number 20 on these promotion lists, arranged according to seniority of service. When a vacancy in the grade of lieutenant-colonel occurred the senior major appearing on the official promotion list would be promoted. Thus, when 19 majors had been promoted the major considered would stand 1 on the promotion list though standing 6 on the present lineal list. He would then be promoted at the first vacancy thereafter and thus pass ahead of the 5 majors who at some period of their service had passed him. Upon promotion he would take his proper place on the promotion list of lieutenant-colonels though remaining at the bottom of the present lineal list and with his precedence as a lieutenant-colonel fixed absolutely by the date of his commission. In a few cases, so serious has been the loss of the officers concerned, promotions through two grades would be necessary to restore them to their former relative places, though in most cases one promotion will complete the effect of the proposed law. But it is important to remember that in no case is the relative rank disturbed until a vacancy occurs and disturbed then only by the one resulting promotion. The purpose as indicated by the phraseology of the bill is not sudden but gradual adjustment, to be secured with the least disturbance of the existing order possible with the accomplishment of the object desired.

CONCLUSIONS AND RECOMMENDATIONS.

I have endeavored in the preceding pages to set forth in some detail the evolution of our system of promotion in the line of the Army; the existing inequalities in relative rank of officers resulting from their application; the remedial action now proposed for the gradual correction of these inequalities; and, finally, every argument not obviously trivial or unsound that has come to my attention either in favor of, or in opposition to, such action. I have been led to this course not only because of the unfortunate conditions obtaining in the higher grades, but because of the admittedly serious nature of the proposed remedy; and not only because I desired a complete investigation in order to be assured in my own conclusions, but to make it possible for you to arrive at such independent conclusions as in your judgment may appear warranted by all of the facts; and, further, not only because my own investigation leads me to favor the proposed legislation, but because this favor if confirmed by you, will constitute a reversal of the judgment of the War Department as expressed in the past upon measures proposed for a similar purpose.

It is true that the present measure compared with those of the past is of far less serious intent, and that in the period since any former measure has been considered all officers of a class deserving

^a The lists indicated accompany this report.

of special consideration by reason of service in the civil war have been promoted or retired and are no longer in a position to be either injured or benefited by the measure. It is also true that the altered conditions of to-day make the field of the proposed bill less extensive than before and its probable effect clearly observable in advance, which last consideration makes it possible, moreover, to safeguard every interest not directly involved. Nevertheless I have not felt that previous judgments supported uniformly by authoritative opinions of existing law should be reversed even under these conditions without a new and independent investigation of all the law and all the facts, and unless the conditions are serious enough to demand both in justice to individuals and for the greater efficiency of the service the application of some remedial measure. My conclusions, therefore, are based upon this independent investigation of the matter, in which every previous authoritative opinion known has been given full consideration, and in my judgment these conclusions follow logically and inevitably, and will, I believe, be confirmed by any unprejudiced mind that satisfies itself by any full investigation of both law and fact.

So far as the law is concerned, I am of the opinion that—

1. In the enactment of section 1204, Revised Statutes, the intent of Congress was to continue in force the system of promotion prevailing at that time and presumably in accordance with existing law.

2. In the letter of the law, as embodied in that section alone, this intent was not made manifest through the failure of the Commissioners to arrive at the real intent of section 12 of the act of March 30, 1814; and that, as enacted, section 1204 made mandatory a system of promotion either undefined, or if defined, then lineal throughout the whole of each arm of the service. But further—

3. In section 1257, Revised Statutes, the system of promotion prescribed in filling vacancies consequent upon retirement is so clearly defined that it would have been impossible to give to section 1204 an interpretation different than was given in practice, without putting into force at the same time two different systems of promotion, which manifestly was neither intended nor desired.

But I am further of the opinion that whatever the law, promotions thereunder having been confirmed by the Senate and the officers duly commissioned, any resulting injustice was thereby condoned and perpetuated, and that therefore any discussion of the application of past laws is from a legal viewpoint purely academic.

Nevertheless, the persistence with which the claims of the officers who felt themselves injured by the interpretation given to section 1204, Revised Statutes, were urged between the date of its enactment and 1890 was sufficient to indicate that the law was far from a satisfactory solution of the question of promotion. Whether this was due entirely to the interpretation of the statute or in part to the fact that the conditions upon which regimental promotion may have been originally founded no longer obtained or to other causes is not important here. Whatever the cause it seems plain that the rapid advancement of certain officers through no superior merit or exceptional service of their own and the overslaughting of others through no inferior merit or fault and the serious inequalities that may now be seen to have resulted therefrom, are sufficient to explain the growing necessity for relief, that found expression eventually

in the act of October 1, 1890. But this act, as has been shown, served in many cases to intensify and perpetuate the inequalities already in existence. Yet there can be no question concerning the legality of promotions made under the latter act, just as there is no doubt that the act itself was founded on the desire not only to prevent in the future a growth of inequalities found inseparable from the regimental system of promotion, but to remove, as far as possible, the inequalities resulting from the operations of such a system in the past.

In my judgment, therefore, the conclusion is inevitable that we are concerned here not so much with the law as with the equity of the case. If injustice has been done through the operation of law, and it matters not whether the law as applied was correctly interpreted or not, such injustice should be corrected if correction be possible, and provided of course that the methods employed do not result in a greater evil than the evil they are designed to remove.

From the point of view of equity there is to my mind no doubt that serious injustice was done to certain officers by the operation of the laws under consideration. In my judgment, moreover, this injustice can now be corrected, though in part only, without doing similar injustice to others. I believe the proposed bill as last drawn provides a means for the accomplishment of these two objects. The single fact that the officers whose promotion under such a bill will be retarded are in nearly all cases younger than the officers whose promotion will be accelerated, and that thus the eventual attainment of the rank which is their due will be secured for both is sufficient to establish beyond question the justice of this measure for all officers concerned.

So far as officers directly interested are concerned, both adherents and opponents of the proposition to readjust rank are admittedly inspired by self-interests; but there is a difference. The former are inspired by a desire to regain certain advantages which were lost, through no lack of merit and no fault of their own, to more fortunate comrades; the latter by a desire to retain advantages gained by them, through no merit of their own, over less fortunate comrades. In considering the equities of such a contest there seems room for little doubt as to where the sympathies of the average disinterested person would be found to lie.

But personal considerations, however important, are secondary to the interests of the service at large. Under the present unfortunate conditions it is not unusual to find in command of posts or organizations officers who have reached the rank entitling them to these positions through a mere application of law and with no claims to exceptional records or unusual ability, while under them are officers of longer service, greater age, and sometimes of greater ability, who were formerly the superiors of the officers under whom they now serve. Such conditions are far from promoting harmony and discipline and are consequently injurious to the efficiency of the service. Again, the absence of ambition in an officer must render him an incumbrance rather than an aid to efficiency. Yet nothing is more likely to destroy ambition than absolute loss of hope of promotion to even the higher field grades—a condition that now exists and must continue to exist for many years, unless some remedy as now proposed is applied. The claim that the proposed measure, by destroying similar hopes of

those officers who have gained in the past, would work a similar evil in the future, can not be admitted, for the reason already set forth based upon their ages as compared with the ages of the officers the proposed bill is intended to benefit. Furthermore, those who have gained have enjoyed the privileges and emoluments of higher rank for many years. These can not be taken away. There would be no real loss. They would retain their present rank, and their places in the future would be fixed by equity and would be all that they could have ever reached had equity always prevailed. In many cases it would be more, since all that has been lost is not restored by the provisions of the proposed act. Finally, I believe that the eminent fairness of the measure will appeal to the line of the Army and have a salutary effect even upon those not affected thereby in any way.

The proposed bill, as introduced in both houses of the Fifty-ninth Congress, was not, in my opinion, drawn with sufficient accuracy to avoid possible injury to interests not involved, but in the form as last introduced in the House (H. R. 16502) it is, I believe, clear, comprehensive, and drawn with an accuracy that safeguards every interest not involved and that insures a gradual adjustment of rank in the future without possibility of such complications as would arise from sudden or numerous changes at one time. The lists of officers concerned, accompanying this report, have been prepared in accordance with the provisions of the bill indicated. I not only give this measure my full support, but I earnestly recommend a favorable report thereon in returning the proposed bills to the Committees on Military Affairs and an urgent appeal for its immediate passage.

Accompanying this report are two petitions from officers, addressed to the Congress praying for unfavorable action upon the proposed measure, and twenty-five petitions from officers praying for favorable action thereon or for the enactment of similar remedial legislation.

J. F. BELL,
Major-General, U. S. Army, Chief of Staff.

LISTS OF CERTAIN OFFICERS OF CAVALRY, ARTILLERY, AND INFANTRY ARRANGED IN ORDER OF PROMOTION TO NEXT HIGHER GRADE UNDER THE PROVISIONS OF THE BILL (H. R. 16502, FIRST SESSION, SIXTIETH CONGRESS) TO READJUST RANK.

These lists are unofficial but prepared from the official Army Registers, and are correct to dates of preparation, February-March, 1908. Subsequent promotions, deaths, etc., before action on the bill is had will, of course, necessitate changes if bill is passed. These, however, show the practicability of preparing the necessary lists under the bill as drawn.

These lists show only the arrangement for promotion to next higher grade. Exactly similar lists may be readily made to show order of promotion thereafter until the full intent of the bill has been reached.

Officers of cavalry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army.

LIEUTENANT-COLONELS.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
1	McClelland.....	3	15 June 1870	36	
2	Hunt.....	4	15 June 1870	58	
3	Hickey.....	2	12 June 1871	.....
4	Watts.....	12	14 June 1872	32	
5	Jones, T. W.....	6	14 June 1872	44	

Officers of cavalry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

LIEUTENANT-COLONELS—Continued.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
6	O'Connor.....	9	13 June 1873	.....
7	Edwards.....	13	1 Oct. 1873	.....
8	Dodd.....	1	15 June 1876	32	
9	Gresham.....	16	15 June 1876	34	
10	Hardie.....	7	28 July 1876	.....
11	Murray.....	5	15 June 1877	25	
12	Wilder.....	10	15 June 1877	32	
13	Gulfoyle.....	11	15 June 1877	40	
14	Hunter.....	8	15 June 1877	67	
15	Day.....	14	15 June 1877	70	
16	Gale.....	17	13 June 1879	10	
17	Finley.....	15	13 June 1879	45	

MAJORS.

1	Bishop.....	5	13 June 1873	.....
2	Sibley.....	7	17 June 1874	.....
3	Andrus.....	6	16 June 1875	.....
4	Wheeler, H. W.....	9	15 Oct. 1875	.....
5	Scott, H. L.....	15	15 June 1876	36	
6	McCormick.....	16	15 June 1876	38	
7	Swift.....	11	28 July 1876	29	Second lieutenant infantry 15 June 1876, transferred to cavalry 28 July 1876.
8	Sickel.....	22	28 July 1876	37	Second lieutenant infantry 15 June 1876, transferred to cavalry 28 July 1876.
9	Fitcher, J.....	1	28 July 1876	42	Second lieutenant infantry 15 June 1876, transferred to cavalry 28 July 1876.
10	Slocum.....	24	28 July 1876	.....	Second lieutenant infantry 21 June 1876, transferred to cavalry 28 July 1876.
11	Nicholson.....	25	15 Aug. 1876	.....
12	Cheever.....	8	15 Aug. 1876	.....
13	Brewer.....	28	31 Aug. 1876	.....
14	Foster.....	26	15 June 1877	18	
15	Blocksom.....	13	15 June 1877	22	
16	Galbraith.....	18	15 June 1877	24	
17	Goldman.....	30	15 June 1877	31	
18	Brown, W. C.....	27	15 June 1877	41	
19	Read, R. D.....	10	15 June 1877	56	
20	Landis.....	39	14 June 1878	.....
21	Macomb.....	31	3 June 1879	.....	Second lieutenant infantry 23 Jan. 1878, transferred to cavalry 3 June 1879.
22	Shunk.....	4	13 June 1879	11	
23	Foltz.....	41	13 June 1879	15	
24	Beach.....	3	13 June 1879	24	
25	Grierson.....	34	13 June 1879	33	
26	Brett.....	29	13 June 1879	34	
27	Lockett.....	12	13 June 1879	39	
28	Lewis.....	32	13 June 1879	43	
29	Taylor.....	2	13 June 1879	60	
30	Ripley.....	17	28 June 1879	.....	Second lieutenant infantry 28 June 1879, transferred to cavalry 23 Feb. 1887, with, and takes place of, Ducat, S., Sept. 1879.
31	Erwin.....	19	12 June 1880	22	
32	Morgan.....	20	12 June 1880	32	
33	Sands.....	36	12 June 1880	36	
34	Trippe.....	37	12 June 1880	52	
35	Mercer.....	33	23 Nov. 1880	.....	Second lieutenant infantry 23 Nov. 1880, transferred by mutual agreement to cavalry 14 Oct. 1898.
36	Boughton.....	21	11 June 1881	9	
37	Gaston.....	14	11 June 1881	16	
38	Carleton.....	44	11 June 1881	17	
39	Johnson, F. O.....	23	11 June 1881	24	
40	Dickman.....	38	11 June 1881	27	
41	West.....	40	11 June 1881	43	
42	Gardner.....	42	11 June 1881	49	
43	McDonald.....	46	2 Mar. 1882	.....
44	Benson.....	35	13 June 1882	7	
45	Allen.....	48	13 June 1882	20	

Officers of cavalry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

MAJORS—Continued.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
46	Stevens.....	43	13 June 1882	29	
47	Dugan.....	45	13 June 1882	31	
48	Freeman.....	49	13 June 1883	7	
49	Rivers.....	47	13 June 1883	31	
50	Heard.....	50	13 June 1883	33	

CAPTAINS.

1	Scott, W. S.....	7	12 June 1880	26	
2	Tate.....	8	12 June 1880	30	
3	Goode.....	9	12 June 1880	47	
4	Waterman.....	10	11 June 1881	.....
5	Forsythe.....	2	13 June 1882	22	
6	Irwin.....	4	13 June 1882	27	
7	Slocum.....	1	1 June 1883	.....	Second Lieutenant infantry 1 Sept. 1879, transferred to cavalry 1 June 1883, to rank from 27 June 1882.
8	Flynn.....	3	13 June 1883	8	
9	Duff.....	11	13 June 1883	9	
10	Macdonald.....	12	13 June 1883	22	
11	Sargent.....	6	13 June 1883	23	
12	Steele.....	13	13 June 1883	24	
13	Cameron.....	14	13 June 1883	29	
14	Walsh.....	15	13 June 1883	37	
15	Read.....	16	13 June 1883	40	
16	Johnson.....	5	19 Sept. 1883	.....	To rank in cavalry from June 14 1883.

Officers of coast artillery arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army.

LIEUTENANT-COLONELS.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
1	Homer.....	1	15 June 1870	.....
2	Coffin.....	3	13 June 1873	.....
3	Anderson.....	2	17 June 1874	8	
4	Deems.....	8	17 June 1874	13	
5	Weaver.....	10	16 June 1875	.....
6	Ludlow.....	6	15 June 1876	6	
7	Hamilton.....	7	15 June 1876	14	
8	Todd.....	4	15 June 1877	5	
9	Woodward.....	12	15 June 1877	11	
10	Slaker.....	5	15 June 1877	12	
11	White.....	9	15 June 1877	13	
12	Marsh.....	11	15 June 1877	14	
13	Rafferty.....	16	12 June 1880	4	
14	Strong.....	14	12 June 1880	11	
15	Allen.....	13	11 June 1881	8	
16	Blunt.....	15	11 June 1881	15	

MAJORS.

1	Bailey.....	3	12 June 1880	8	
2	Harmon.....	6	12 June 1880	14	
3	Hunter.....	8	12 June 1880	15	
4	Bartlett.....	11	11 June 1881	10	
5	Bennett.....	12	11 June 1881	12	
6	Phillips.....	2	11 June 1881	13	
7	Townsley.....	4	11 June 1881	14	
8	Newcomb.....	1	13 June 1882	6	
9	Barney.....	5	13 June 1882	9	
10	Cronkhite.....	7	13 June 1882	10	
11	Davis.....	13	13 June 1883	5	
12	Ridgeway.....	14	13 June 1883	10	

Officers of coast artillery arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

MAJORS—Continued.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
13	Ruckman.....	15	13 June 1883	11	Lost 9 files through sentence court-martial.
14	Stone.....	16	13 June 1883	13	
15	Haynes.....	17	13 June 1883	15	
16	Walke.....	18	13 June 1883	16	
17	Footé.....	9	15 June 1884	10	
18	Lewis.....	20	15 June 1884	11	
19	Hancock.....	19	13 June 1883	4	
20	Benton.....	21	15 June 1884	20	
21	Hawthorne.....	22	30 Oct. 1884	.....
22	Willcox.....	23	14 June 1885	4	
23	Brooks.....	10	14 June 1885	7	
24	Barrette.....	24	14 June 1885	9	
25	Hubbard.....	25	14 June 1885	13	

Officers of field artillery arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army.

LIEUTENANT-COLONELS.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
1	Hoyle.....	2	16 June 1875	Second lieutenant infantry, transferred to artillery 15 Aug. 1876.
2	Gayle.....	4	15 June 1876	13	
3	Adams.....	3	15 June 1876	17	
4	Foster.....	1	15 June 1876	20	
5	Rumbough.....	6	12 June 1880	.....
6	Greble.....	5	11 June 1881	.....

MAJORS.

1	Van Deusen.....	3	12 June 1880 (13 June 1882)	16 (7)	Second lieutenant cavalry, transferred to artillery 31 Jan. 1884, to rank from 13 June 1882, vice Benson, No. 7, class of 1882.
2	Treat.....	1	13 June 1882	13	
3	Miller.....	3	13 June 1882	14	
4	Conklin.....	4	15 June 1884	8	
5	Sturgis.....	5	15 June 1884	13	
6	Lassister.....	6	12 June 1889	.....

Officers of infantry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army.

LIEUTENANT-COLONEL.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
1	Robinson.....	3	12 June 1871	.....
2	Cecil.....	26	17 June 1874	18	
3	Hardin.....	13	17 June 1874	34	
4	Williams.....	5	31 Oct. 1874	.....
5	Mason.....	4	20 Jan. 1875	.....
6	Chubb.....	10	20 Jan. 1875	.....
7	Young.....	22	20 Jan. 1875	.....
8	Mann.....	27	16 June 1875	25	
9	Evans, R. K.....	8	16 June 1875	49	

Officers of infantry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

LIEUTENANT-COLONELS—Continued.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
10	Cooke.....	9	15 Oct. 1875	.....
11	Bowen.....	2	15 Oct. 1875	.....
12	Lovering.....	7	15 June 1876	10	
13	Buttler.....	20	15 June 1876	26	
14	Sharpe.....	1	28 July 1876	.....	Second lieutenant cavalry 21 June 1876, transferred to infantry 28 July 1876.
15	Febiger.....	15	15 Aug. 1876	.....
16	Byrnie.....	32	9 Jan. 1877	.....
17	Abercrombie.....	33	1 Mar. 1877	.....
18	Wilson.....	14	15 June 1877	26	
19	Wood, W. T.....	42	15 June 1877	42	
20	Augur.....	17	15 June 1877	47	
21	Glenn.....	25	15 June 1877	58	
22	Evans, W. P.....	12	14 June 1878	10	
23	Waltz.....	28	14 June 1878	27	
24	Getty.....	30	14 June 1878	34	
25	Wolf.....	19	14 June 1878	41	
26	French.....	16	13 June 1879	12	
27	Irons.....	6	13 June 1879	49	
28	Bullard.....	23	(13 June 1879)	(50)	Transferred from Subsistence Department with, and takes place of Eastman, No. 50, class of 13 June 1879.
29	McClure.....	18	13 June 1879	51	
30	Jones.....	31	13 June 1879	59	
31	Ames.....	29	1 Sept. 1879	.....
32	Rogers.....	21	12 June 1880	36	
33	Moon.....	24	12 June 1880	37	

MAJORS.

1	Lassitor.....	15	1 Oct. 1873	.....
2	Bailey.....	19	15 June 1876	33	
3	Van Vliet.....	23	14 Dec. 1876	.....
4	Paxton.....	4	3 Mar. 1877	.....
5	Nichols.....	1	7 May 1877	.....
6	Plummer.....	27	15 June 1877	20	
7	Chynoweth.....	26	15 June 1877	28	
8	Kirby.....	28	15 June 1877	38	
9	Jackson.....	6	15 June 1877	65	
10	Frederick.....	8	15 June 1877	68	
11	Maney.....	18	15 June 1877	73	
12	Howe.....	29	14 June 1878	11	
13	Buck.....	24	14 June 1878	17	
14	Pickering.....	17	14 June 1878	19	
15	Tillson.....	9	14 June 1878	20	
16	Phister.....	3	14 June 1878	35	
17	Clark, W. O.....	25	(14 June 1878)	(39)	Second lieutenant cavalry, transferred to infantry, 13 Feb. 1882, with, and takes place of, Willcox, No. 39, class of 14 June 1878.
18	Pendleton.....	43	13 June 1879	22	
19	Noyes.....	37	13 June 1879	28	
20	Truitt.....	32	13 June 1879	35	
21	Liggett.....	13	13 June 1879	41	
22	Parke.....	35	13 June 1879	42	
23	Howell.....	46	13 June 1879	53	
24	Browne.....	10	13 June 1879	54	
25	Mallory.....	20	13 June 1879	56	
26	May.....	40	13 June 1879	57	
27	Miller.....	21	13 June 1879	58	
28	Ducat.....	11	(28 June 1879)	.....	Transferred to cavalry 8 Sept. 1879; transferred to infantry 23 Feb. 1887, with, and takes place of, Ripley, 28 June 1879.
29	Partello.....	31	1 Sept. 1879	.....
30	Steedman.....	65	1 Feb. 1876	.....	Lost 50 files through sentence court martial 7 Dec. 1900; lost 11 files through action of examining board; suspended from 16 Dec. 1904 to 1 Feb. 1906.

Officers of infantry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

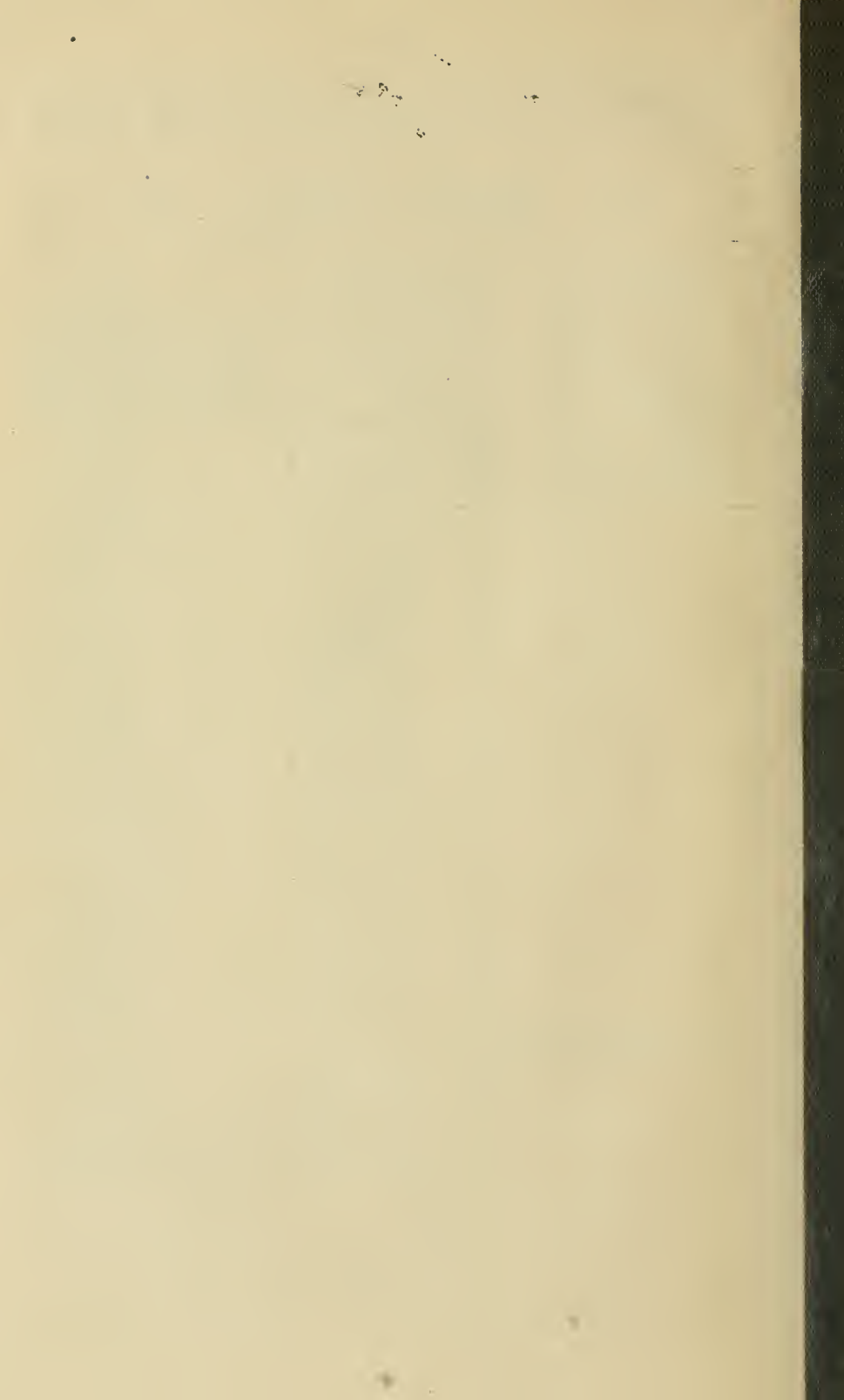
MAJORS—Continued.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
31	Benham.....	22	1 Sept. 1879	.....
32	Terrett.....	2	1 Sept. 1879	.....
33	Dunning.....	.....	12 June 1880	.....	19
34	Travis.....	30	12 June 1880	.....	31
35	Roberts.....	61	12 June 1880	.....	38
36	Bell, George.....	33	12 June 1880	.....	43
37	Torrey.....	5	12 June 1880	.....	48
38	Blauvelt.....	58	24 June 1880	.....
39	Chatfield.....	62	4 Oct. 1880	.....
40	Hearn.....	41	24 Nov. 1880	.....
41	McCoy.....	36	26 Nov. 1880	.....
42	Kernan.....	47	11 June 1881	.....	18
43	Turner.....	7	11 June 1881	.....	19
44	Hodges.....	59	11 June 1881	.....	23
45	Morrison.....	63	11 June 1881	.....	26
46	Barth.....	52	11 June 1881	.....	32
47	Rowan.....	64	11 June 1881	.....	42
48	Leonhauser.....	44	11 June 1881	.....	46
49	Kennon.....	14	11 June 1881	.....	50
50	Clarke.....	35	27 Mar. 1882	.....
51	Cotter.....	66	27 Mar. 1882	.....
52	McIver.....	50	13 June 1882	.....	19
53	Sage.....	67	13 June 1882	.....	21
54	Beacom.....	39	13 June 1882	.....	26
55	Goodin.....	68	13 June 1882	.....	32
56	Allaire.....	56	13 June 1882	.....	33
57	Kennedy.....	48	13 June 1883	.....	18
58	Morton.....	16	13 June 1883	.....	20
59	Root.....	69	13 June 1883	.....	25
60	Wright.....	42	13 June 1883	.....	30
61	Hale.....	70	13 June 1883	.....	36
62	Taggart.....	71	13 June 1883	.....	39
63	Faison.....	72	13 June 1883	.....	41
64	Hasbrouck.....	73	13 June 1883	.....	42
65	Kreps.....	74	13 June 1883	.....	43
66	Cabell.....	75	13 June 1883	.....	44
67	Griffith.....	49	13 June 1883	.....	48
68	Perkins.....	76	13 June 1883	.....	49
69	Bundy.....	53	13 June 1883	.....	50
70	Burnham.....	77	3 July 1883	.....
71	Arrasmith.....	78	3 July 1883	.....
72	Johnston, W. H.....	79	10 Oct. 1883	.....
73	Atkinson.....	80	10 Oct. 1883	.....
74	Blatchford.....	38	10 Oct. 1883	.....
75	Pursell.....	81	13 Oct. 1883	.....
76	Beall.....	82	15 Oct. 1883	.....
77	Stamper.....	57	21 Nov. 1883	.....
78	Nichols.....	83	21 Nov. 1883	.....
79	O'Neil.....	84	4 Feb. 1884	.....
80	Simpson.....	85	15 June 1884	.....	14
81	Hatch.....	54	15 June 1884	.....	15
82	Richardson.....	51	15 June 1884	.....	22
83	Dentler.....	86	15 June 1884	.....	24
84	Thompson.....	87	15 June 1884	.....	26
85	Styer.....	88	15 June 1884	.....	29
86	Ayer.....	80	15 June 1884	.....	31
87	Fremont.....	.....	1 Sept. 1879	.....	Lost 60 files through sentence court-martial 30 April, 1907.
88	Noble.....	91	15 June 1884	.....	32
89	Shanks.....	55	15 June 1884	.....	33
90	Morse.....	92	15 June 1884	.....	34
91	Finley.....	93	1 July 1884	.....
92	Day.....	94	15 July 1884	.....
93	Reichman.....	95	4 Aug. 1884	.....
94	Roudiez.....	96	4 Aug. 1884	.....
95	Penrose.....	45	30 Oct. 1884	.....
96	Hirst.....	60	1 July 1886	.....

Officers of infantry arranged in order of promotion to next higher grade under the provisions of the bill (H. R. 16502) to readjust the rank of certain officers of the Army—Continued.

CAPTAINS.

No.	Name.	No. on present lineal list.	Date of entry.	Class standing on graduation.	Remarks.
1	Wren.....	1	30 Oct. 1884	No change in lineal arrangement of captains of infantry, as all now on list have been promoted under the act of 1 Oct. 1890; but after promotion to majorities all 17 captains included on this list would pass ahead of Major Hirst on promotion to lieutenant-colonels.
2	Buffington.....	2	30 Oct. 1884	.....
3	Beckurts.....	3	30 Oct. 1884	.....
4	Moore.....	4	30 Oct. 1884	.....
5	Stevens.....	5	30 Oct. 1884	.....
6	Krug.....	6	30 Oct. 1884	.....
7	Pardee.....	7	30 Oct. 1884	.....
8	Wright.....	8	19 Jan. 1885	.....
9	Brewster.....	9	19 Jan. 1885	.....
10	Muir.....	10	14 June 1885	8	
11	Parmerter.....	11	14 June 1885	16	
12	Smiley.....	12	14 June 1885	28	
13	Devore.....	13	14 June 1885	29	
14	Buck.....	14	14 June 1885	30	
15	Martin.....	15	14 June 1885	37	
16	Lawton.....	16	14 June 1885	39	
17	Johnson, E. M.....	17	15 Aug. 1885	



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